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Sri Lanka's Ongoing Shift to Authoritarianism

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One word that is increasingly mentioned when discussing contemporary Sri Lanka is “authoritarianism.” This is primarily due to President Mahinda Rajapaksa’s frittering away of citizens’ civil liberties even as he and his “First Family” arrogate power and—together with their close relatives, cronies, and supporters—govern extra-constitutionally and extra-judicially. The malpractices were tolerated, even justified as necessary, during the war against the separatist Liberation Tigers of Tamil Eelam (LTTE). That war, however, ended in brutal and controversial fashion in May 2009, with the military accused of committing war crimes during the final campaign. Since then, the Sri Lankan government has vociferously castigated the United Nations and western countries for demanding accountability for those alleged crimes. In addition, the government has also deliberately undermined reconciliation with the Tamil minority, while simultaneously manipulating a climate of Sinhalese Buddhist triumphalism to further strengthen the executive’s powers.

On the subject of political reform, Rajapaksa’s government discarded the 17th Amendment of the Constitution—which created a Constitutional Council with powers to appoint and dismiss independent commissioners overseeing elections, public services, police, human rights, finance, bribery and corruption, and the judiciary—and instead rammed through the 18th Amendment, which effectively puts the president in charge of appointing these commissioners, while also eliminating presidential term limits. The latter permits Rajapaksa to run for a third term and fashion a milieu conducive to creating a political dynasty. Sri Lanka’s 1978 constitution enabled a powerful executive with minimal checks and balances. This combined with the gruesome civil war allowed presidents to stretch their powers, and Mahinda Rajapaksa has done so to every degree. Indeed, politicians, bureaucrats, media, business, and civil society are so cowed and weakened under Rajapaksa that Sri Lanka today is more of a pseudo democracy—one that is rife with nepotism, corruption, sabotaged political and bureaucratic institutions, weak rule of law, and a culture of impunity among the elites. Furthermore, the Sri Lankan military has not been demobilized since the end of the civil war, instead it is venturing into civilian commercial projects in ways that undermine fair business practices.

A compromised judiciary that occasionally stood up to politicians was considered the only entity able to check the regime’s authoritarian rampage. This expectation is now questionable, given the impeachment in January this year of Shirani Bandaranayake, the country’s first female chief justice. Executive meddling has long politicized and corrupted Sri Lanka’s courts system. “Telephone justice,” whereby the attorney general’s or president’s office calls judges and tells them how to rule in particular cases, is rumored to be common right up to the Supreme Court. In return, individual judge’s unethical and otherwise illegal transactions are tolerated. Pliant justices are also rewarded with perks and their family members showered with sinecures—usually high-ranking positions in state corporations. Impeached Chief Justice Shirani Bandaranayake’s husband, for example, was made Chairman of the National Savings Bank despite a controversial tenure at the Sri Lanka Insurance Corporation. It was widely recognized that his appointment was related to her position on the Supreme Court.

Neil DeVotta, Associate Professor at Wake Forest University, discusses how “[S]ri Lanka is clearly moving towards an entrenched brand of political authoritarianism under Mahinda Rajapaksa and his cronies.”

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President Rajapaksa appointed Shirani Bandaranayake chief justice in May, 2011. She, like her predecessors and fellow justices, contributed to court rulings that have strengthened the executive presidency. Yet, when one of her decisions upset the First Family, a Parliamentary Select Committee (PSC) comprised of politicians from the ruling coalition found her guilty of financial and official misconduct and recommended impeachment—despite the Supreme Court ruling that the PSC had no right to investigate a senior judge and the Appeals Court ordering parliament to abandon the impeachment process. Civil society organizations, clergy members, foreign governments, and various international bodies likewise objected strenuously. The president’s reaction was to summarily sign the order removing Mrs. Bandaranayake, even as pro-government thugs brandishing poles gathered outside her official residence to celebrate the presidential ruling and intimidate her—lest she refused to give up her post. Their actions were consistent with recent attacks against those associated with the judiciary, including an assault on the Judiciary Service Commission secretary after he complained about executive interference in the courts; members of Sri Lanka’s Bar Association being issued death threats; and prominent lawyers who protested vocally against the Chief Justice’s impeachment receiving threatening letters from a secret group identifying itself as the Patriotic Front.

The episode that caused the rift between the First Family and Chief Justice Bandaranayake was the government’s attempt to create a *Divinegume* (Improving Lives) department, which amalgamates the operations of three extant entities under the authority of the current Minister of Economic Development Basil Rajapaksa, who coincidentally is a brother of Mahinda Rajapaksa. Another presidential sibling, Gotabaya, oversees the Ministry of Defense and a third brother, Chamal, is Speaker of Parliament; combined, the Rajapaksa family controls nearly 70 percent of Sri Lanka’s budget. The *Divinegume* program is designed to give Basil Rajapaksa an additional \$600 million for development and low income households with hardly any oversight, thereby effectively expanding the First Family’s patronage system. Indeed, the bill sanctioning the program contains a secrecy clause that prohibits *Divinegume* department personnel from divulging any information associated with its operations. The Supreme Court’s ruling that the bill violated aspects of the constitution is what led to the dismissal of Mrs. Bandaranayake.

Successive presidents have often promoted personnel from the Attorney General’s office to the higher courts, resulting in a judiciary that harbors an “executive mindset.” This troubling phenomenon is best illustrated by Mohan Peiris, the person chosen in January to replace Shirani Bandaranayake. Peiris, like Bandaranayake, has not served as a judge. Instead, he has spent much of his professional career working for the Attorney General’s office as a State Counsel and later as a Senior State Counsel. He also served as a legal consultant to the Ministry of Defense before being made Attorney General in 2008. He was serving as legal consultant to the cabinet when chosen to be the Chief Justice. Peiris has been accused of misleading—on the government’s behalf—a United Nations investigation into the whereabouts of a disappeared journalist and few believe he can operate independently as Chief Justice. General Sarath Fonseka was the army commander who finally defeated the LTTE, and he later ran, unsuccessfully, against Mahinda Rajapaksa in the last presidential election. Following the election, Fonseka, the national war hero, was dragged out of his office, charged with corruption, and ultimately jailed for over two years. The message communicated to Sri Lankans was a simple one: if the army chief who defeated the LTTE could be thus humiliated, no one is immune. Mrs. Bandaranayake’s impeachment has now sent a similar message to the judiciary.

It is instructive that governing coalition parliamentarians affirmed their willingness to abandon Mrs. Bandaranayake by signing a blank sheet of paper devoid of the impeachment motion. With governing politicians so servile, the country’s opposition impotent, the media muzzled, civil society persecuted, and judiciary intimidated, Sri Lanka is clearly moving towards an entrenched brand of political authoritarianism under Mahinda Rajapaksa and his cronies. As presidential sibling Basil Rajapaksa proclaimed to *The Economist* in November 2010, “an era of ‘ruler kings’ has begun.”

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